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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,325	09/11/2003	Aurora L. Fernandez-Decastro	DECASTRO10	3767
1444	7590	12/29/2004	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			RAGONESE, ANDREA M	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/659,325	FERNANDEZ-DECASTRO, AURORA L.
	<b>Examiner</b>	<b>Art Unit</b>
	Andrea M. Ragonese	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 November 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION*****Response to Amendment***

1. The amendment filed on November 19, 2004 has been entered. Examiner acknowledges that **claim 9** has been amended.
2. The declaration filed on November 19, 2004 under 37 CFR 1.131 is sufficient to overcome the Begum (US 6,758,215 B2) reference.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 9-17** are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson, II (US 4,890,609).

- Regarding **claim 9**, Wilson discloses a mask **1** covering at least the nose and mouth of a wearer, said mask **1** comprised substantially of filtering media for filtering air to the wearer (column 1, lines 17-21), said mask **10** having an area **11** approximately over the mouth of the wearer that can be opened and closed at will without removing the mask **1**, said area **11** being constructed such that it opens when a device is inserted into the area **11** and closes when the device is removed therefrom.
- Regarding **claim 10**, the area **11** that can be opened and closed at will without removing the mask **1** is selected from the group consisting of a flap

over a hole or aperture, a detachable patch over a hole or aperture, and an aperture or hole which is self-opening and self-closing.

- Regarding **claim 11**, the area **11** that can be opened or closed at will comprises a hole or aperture **11** covered with touching or overlapping pieces of material **9, 10**.
- Regarding **claim 12**, the area **11** that can be opened or closed at will comprises a hole or aperture covered with a flap **8** attached to the mask **1**.
- Regarding **claim 13**, as broadly interpreted by the Examiner, the “self-closing material” is interpreted to be the flaps of material created by the X-cut since it is made of a fabric material. When the threaded portion **5** is inserted into the hole **11**, the flaps are in the “open” position. Once the threaded portion **5** is removed from hole **11**, flaps will “close” the opening on its own by the force of gravity; thus, the area that can be opened or closed at will is formed of a self-closing material over a hole or aperture **11**.
- Regarding **claim 14**, the mask **1** also has attachments to maintain the mask **1** in place on a wearer.
- Regarding **claim 15**, as broadly interpreted by the Examiner, the washer **9** that constitutes the “removable patch” is fully capable of being removed from the mask **1** and then re-affixed to mask **1**; thus, the area **11** that can be opened or closed at will comprises a hole or aperture **11** which is covered by a removable patch **9** which can be re-affixed to the mask **1**.

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- Regarding **claim 16**, as broadly interpreted by the Examiner, the mask 1 substantially covers the wearer's entire face, which constitutes a considerable portion of the wearer's head; thus, the mask 1 substantially covers the wearer's head.
- Regarding **claim 17**, the mask 1 is made of a flexible material.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson, II (US 4,890,609), as applied to **claims 9-17** above, in view of de Saint-Rapt et al. (US 2,023,267) or Colley (US 3,067,425). Wilson, II discloses a mask 1 comprising all the limitations recited in **claim 18**, with the exception of a hole 11 that is self-opening and self-closing. However, the use of self-opening and self-closing aperture in a mask was known at the time the invention was made. Specifically, de Saint-Rapt et al. teaches

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the use of a "novel form of valve to ensure imperviousness before, during, and after the introduction of a tube which one end connects to the mouth, the other end dipping directly or through the medium of a rubber tube into the receiver containing the absorbent liquid," which allows for the introduction of food or drinks to the user while still maintaining the "gastightness" of the mask (column 1, lines 1-37). Additionally, Colley teaches the use of a "penetrable sealing closure means **17**" for allowing the introduction of food or drinks to the user while maintaining a pressurized and clean atmosphere within the helmet, and thus, preventing unwanted gases and contaminants from entering the helmet (column 6, lines 51-75). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the mask **1** of Wilson, II by substituting, in place of the aperture **11**, a self-opening and self-closing aperture because it is well known in the art, as taught by de Saint-Rapt et al. or Colley, to utilize a self-opening and self-closing aperture in order to allow the wearer to eat or drink while wearing mask without compromising the effectiveness of the gas mask.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

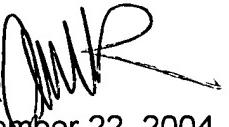
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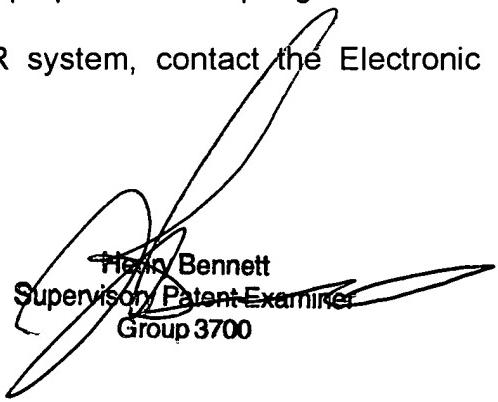
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese whose telephone number is 571-272-4804**. The examiner can normally be reached on Monday through Friday from 8:30 am until 5:00 pm.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR   
December 22, 2004

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700